United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 2697.

WALTER B. JOHNSON; T. R. HUSTED; B. A. WEST; CHARLES RIGGS; GEORGE GOFF; MIKE McGREW; LEWIS KOLB; J. M. GENTRY; and IVAN KENNEDY, APPELLANTS,

vs.

YELLOW CAB TRANSIT COMPANY, a corporation, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA.

FILED FEBRUARY 18, 1943

INDEX.

Pleas and Proceedings in the United States Circuit Court of Appeals.

	Original	Print
Appellants' statement of points relied on		1
Appellants' designation of parts of the record to be printed		3

Pleas and Proceedings in United States District Court.

Complaint	1	3
Answer	11	10
Stipulation of facts	13	11

	Original	Print
Exhibit A—Bill of lading, October 24, 1942, M. B. Gintz Company to Yellow Cab Transit Company	17	15
Supplemental stipulation of facts	19	17
Opinion	21	18
Findings of fact and conclusions of law	37	35
Judgment	39	36
Notice of appeal	40	37
Clerk's certificate	44	37
Order joining J. M. Gentry and Ivan Kennedy as parties defendant and parties appellant	..	37

Further Proceedings in the United States Circuit Court of Appeals.

Order of submission	40
Opinion	40
Judgment	54
Order staying mandate	54
Clerk's certificate	55
Order allowing certiorari	55

Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the March Term, 1943, of said Court, before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

On the 13th day of February, A. D. 1943, a transcript of the record, pursuant to a notice of appeal, filed in the District Court of the United States for the Western District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein Walter B. Johnson et al. were appellants, and Yellow Cab Transit Company, a corporation, was appellee, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

No. 2697.

WALTER B. JOHNSON; T. R. HUSTED; B. A. WEST; CHARLES RIGGS; GEORGE GOFF; MIKE McGREW; LEWIS KOLB; J. M. GENTRY; and IVAN KENNEDY, APPELLANTS,

vs.

YELLOW CAB TRANSIT COMPANY, a corporation, APPELLEE.

Appellants' Statement of Points.

The appellants herein will rely upon the following points:

1. The shipment of liquor involved in said case was not moving in interstate commerce when seized by appellants.

2. Said shipment and the possession and transportation thereof were in violation of the laws of the State of Oklahoma.

3. Said shipment and the possession, transportation, delivery and distribution thereof were in violation of the laws of the United States relating to Fort Sill Military Reservation.

4. Said shipment and transportation thereof were in violation of the laws and public policy of the United States and appellee could not claim the protection of interstate commerce or the assistance of the courts of the United States in the recovery of said liquor.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
Attorneys for Appellants.

Filed February 23, 1943. Robert B. Cartwright, Clerk.

Designation of Record.

The appellants hereby designate the following portions of the record to be printed:

1. Complaint.
2. Answer.
3. Stipulation.
4. Supplemental Stipulation.
5. Opinion.
6. Findings of Fact, Conclusions of Law and Decree.
7. Notice of Appeal.
8. Designation of the Record to be included on appeal.
9. Statement of Points on which appellants will rely.
10. Order joining additional parties appellant.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
Attorneys for Appellants.

Service of copy of the above acknowledged this 18th day of February, 1943. Appellee waives time in which to suggest additional parts for printing and agrees that the record be printed as above set forth.

J. B. DUDLEY & DUKE DUVALL,
Attorneys for Appellee.

Filed February 23, 1943. Robert B. Cartwright, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE EDGAR S. VAUGHT, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

YELLOW CAB TRANSIT COMPANY, a corporation,
PLAINTIFF,

No. 1145 vs. Civil

WALTER B. JOHNSON; T. R. HUSTED; B. A. WEST; CHARLES RIGGS; GEORGE GOFF; MIKE McGREW; LEWIS KOLB, DEFENDANTS.

Complaint.

1 Comes now the above named plaintiff, and for its cause of action against the above named defendants, states:

(1) That plaintiff is a corporation duly organized and existing under the laws of the State of Oklahoma, with its principal place of business at Oklahoma City therein; that the defendant Walter B. Johnson is the Commissioner of Public Safety of the State of Oklahoma; that the defendant T. R. Husted is the Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma, and the defendants B. A. West and Charles Riggs are his Deputies; that the defendant George Goff is the Sheriff of Oklahoma County, Oklahoma, and the defendants Mike McGrew and Lewis Kolb are his Deputies.

(2) That plaintiff is now, and was at all times mentioned herein and for many years past, engaged in the business of
2 the transportation of commodities generally by motor vehicle in interstate and foreign commerce as a common carrier for hire, and operates in and through and serves the States of Kentucky, Indiana, Illinois, Missouri, Kansas, Oklahoma and Texas and the Fort Sill and other United States Military Reservations, under and by

virtue of authority granted to it by the Interstate Commerce Commission pursuant to the provisions of the Federal Motor Carrier Act of 1935, as amended, being Part II of the Interstate Commerce Act, 49 USCA, Chapter 8; that plaintiff is so authorized to serve the public in interstate commerce between East St. Louis, Illinois, St. Louis, Missouri, and Lawton, Oklahoma, and Fort Sill Military Reservation, U. S. A., via Oklahoma City; that among other commodities, plaintiff was and is authorized to transport wines and *spiritous* liquors, and has and had duly published and filed with the Interstate Commerce Commission its lawful tariffs quoting rates and charges for the shipment of said commodities over its line to the points and places it is authorized to serve.

(3) That on or about the 24th day of October, 1942, there was tendered by M. B. Gintz Company, as consignor, at East St. Louis, Illinois, to plaintiff, and accepted by it in the regular course of its business as a common carrier, a shipment consisting of 225 cases of wines and *spiritous* liquors, under a standard, uniform, straight bill of lading which is approved by the Interstate Commerce Commission, and upon which shipment the freight was prepaid, consigned to the F. A. S. Officers Club Mess at Fort Sill Military Reservation, U. S. A.

(4) That plaintiff is informed, believes and alleges that the purchase of the liquor contained in said shipment was made in the State of Illinois and accomplished by a number of United States Army Officers, members of the Officers Club Mess, Fort Sill, by each of such Officers executing his own order for the purchase and shipment to and for him at the Officers Club Mess at Fort Sill of the liquor covered by his order; and that all of the liquor in said shipment was covered by such orders which were transmitted to the shipper, M. B. Gintz Company, of East St. Louis, Illinois, which it received, accepted and executed by delivering to your plaintiff the liquor covered by such orders, which plaintiff, as a common carrier for hire, accepted in accordance with its tariff published and on file with the Interstate Commerce Commission for transportation from East St. Louis, Illinois, through various States including the State of Oklahoma, destined to the

Officers Club Mess, Fort Sill, for the various Officers who purchased the same. That such order, purchase and shipment in no way violated any State or Federal law, nor any rule, order or regulation of the War Department of the United States or the Commanding Officer of the Fort Sill Military Reservation.

(5) That said shipment was routed to Fort Sill, via Oklahoma City, Oklahoma, and plaintiff, while transporting the same in one of its trailers, on October 26, 1942, momentarily stopped said trailer at its Oklahoma City terminal and dock to unload therefrom freight other than that destined for the Fort Sill Military Reservation and for points between Oklahoma City and Fort Sill Military Reservation; that it was the purpose of plaintiff, after unloading such freight, to load some 10,000 to 12,000 pounds of freight which it had accumulated at its Oklahoma City terminal from various directions and points, bound for Fort Sill and points intermediate between Oklahoma City and Fort Sill; that said freight would have made an entire truckload of 18,000 to 20,000 pounds; and it was the purpose of plaintiff to transport and deliver the aforesaid shipment to destination in said Reservation in the road truck and trailer in which it was transported from point of origin, and without said shipment ever having been removed therefrom during its entire movement.

(6) That on said October 26, 1942, shortly after the arrival of the truck and trailer containing the aforesaid shipment at the Oklahoma City terminal of plaintiff, and while the same was being loaded with the additional freight above mentioned, and while said shipment was still in transit in interstate commerce and before it had come to rest, the defendants, with the exception of George Goff, came upon the premises of plaintiff at 311 South Western Avenue in Oklahoma City, Oklahoma, and forcibly, wrongfully and unlawfully seized and took possession of said shipment and transported the same away from said premises; that defendants, and each of them, since said seizure, have wrongfully and unlawfully withheld and are continuing to so withhold possession of said shipment from plaintiff, and are unlawfully interfering with its transportation in interstate commerce to the consignee at the point of destination; that plaintiff is informed and believes that said shipment has

been stored in the basement of the Oklahoma County Court House in Oklahoma City, Oklahoma, and is now in the joint possession and custody of the defendants Walter B. Johnson and George Goff, their deputies, agents, servants and employees.

(7) That the Fort Sill Military Reservation site was acquired by the Federal Government from France long before Oklahoma became a State, and is now and has been, since prior to the admission of Oklahoma as a State to the Union, used exclusively for military purposes and for the performance of the functions of the War Department of the Federal Government; that the Officers Mess at Fort Sill is an instrumentality of the Federal Government, organized, created and operating in strict conformity to and in compliance with the Federal Laws and rules, regulations and orders of the War Department of the Federal Government and of the Commanding Officer of the Post; that such Officers Mess was created and is maintained for the necessary care, use and benefit of the Officers of the United States Army stationed at Fort Sill, and civilians are not entitled or permitted to use the facilities of such Officers Mess; that a large number of United States Army Officers live at said Officers Club and it is their only home and place of residence.

(8) That the laws of the State of Oklahoma do not govern and are not operative in and upon, and the State has no jurisdiction of, the Fort Sill Military Reservation, which is under the exclusive jurisdiction and control of the Federal Government, amenable only to the laws of said Government, the rules, regulations and orders of the War Department and of the Commanding Officer of said Fort; that the government upon said Reservation is and has at all times been entirely military, and is immediately administered and enforced by the Commanding Officer of said Fort; that the State of Oklahoma has no jurisdiction, power or authority over said Reservation or the military personnel stationed or located thereon, in connection with their activities within the confines of said Reservation, and has no right, power or authority to interfere with the rights and privileges of the military personnel stationed at or residing in and upon said Reservation, which is a separate governmental entity or sovereignty from the State of Oklahoma.

(9) That said shipment was not, at the time of said seizure or at any other time, moving into, through or
6 within the State of Oklahoma in violation of any of the constitutional or statutory provisions of said State with reference to the importation, transportation or sale of *spiritous* liquors or otherwise, and was not being imported or transported into the State of Oklahoma but was moving in interstate commerce, and particularly commerce to which authority to regulate is vested exclusively in Congress by Article 1, Section 8, and Article 4, Section 3, of the Federal Constitution, through the State, destined for and to within the *the* Fort Sill Military Reservation; and at the time of the unlawful interference with said shipment by the defendants, the same was in transit to its destination at and within the Fort Sill Military Reservation, and, but for said interference, said shipment would have continued its interstate movement to the destination within said Reservation without coming to rest within the State of Oklahoma.

(10) That the transportation of the aforesaid shipment was a legal and proper one, and violated no law of the State of Oklahoma, and plaintiff was bound as a common carrier for hire in interstate commerce to accept and transport said shipment under its tariffs on file with the Interstate Commerce Commission, by virtue of the provisions of the Interstate Commerce Act aforesaid, and is likewise bound thereby to complete said shipment and deliver the same to its destination in the Fort Sill Military Reservation; that said defendants, wholly without authority of law and beyond the scope of the powers and jurisdiction of the offices which they hold, wrongfully, unlawfully and forcibly seized and took possession of said shipment aforesaid, and continue to so wrongfully withhold possession of the same from this plaintiff and to unlawfully interfere with and obstruct the movement of said shipment in interstate commerce through the State of Oklahoma.

7 (11) That under Part II of the Interstate Commerce Act, as aforesaid, plaintiff has not only the right, but the duty and obligation, to transport said shipment through to the destination in the Fort Sill Military Reservation, and that its failure so to do is a breach of its duties as a carrier and bailee for hire and will subject it to claims for damages; that plaintiff is informed and believes

that the defendants, unless restrained from so doing, will destroy the aforesaid shipment under the pretense that it is contraband, which would likewise subject plaintiff to claims for damages; that plaintiff has no adequate remedy at law, and is being and will continue to be irreparably injured by the wrongful and unlawful acts of the defendants, as aforesaid.

(12) That under these circumstances, plaintiff is entitled to a mandatory injunction, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying the aforesaid shipment, from interfering with plaintiff's possession of the same or obstructing the movement of said shipment in interstate commerce to its destination, and requiring defendants to return said shipment to plaintiff at its dock at the Oklahoma City terminal from which it was wrongfully and unlawfully removed; that, pending a hearing upon the merits of this case, a preliminary injunction should issue, enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage; that, pending hearing upon the preliminary injunction and notice of the same as required by law, plaintiff is entitled to a temporary restraining order without notice, and will suffer immediate, irreparable injury unless the court

8 issues a temporary restraining order pending notice of and hearing upon the application for temporary injunction, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage.

(13) That this action is one arising under the Commerce Clause of the Federal Constitution and Part II of the Interstate Commerce Act, and a determination of the controversy necessarily involves a construction, application and enforcement of said Federal Laws and other Federal Laws, and the court has jurisdiction over the subject matter herein under the provisions of 28 USCA, Section 41 (1) and (8); and in

this connection plaintiff states that the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

Wherefore, plaintiff prays for judgment as follows:

(1) That a mandatory injunction issue, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying the aforesaid shipment, from interfering with plaintiff's possession of the same or obstructing the movement of said shipment in interstate commerce to its destination, and requiring defendants to return said shipment to plaintiff at its dock at the Oklahoma City terminal from which it was wrongfully and unlawfully removed.

(2) That, pending a hearing upon the merits of this case, a preliminary injunction issue, enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment
9 in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage.

(3) That, pending hearing upon the preliminary injunction and notice of the same as required by law, a temporary restraining order issue, without notice, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage.

(4) For such other and further relief as plaintiff may be entitled, or the court may deem just and equitable.

J. B. DUDLEY, Ramsey Tower,
Oklahoma City, Oklahoma,
DUKE DUVALL, Ramsey Tower,
Oklahoma City, Oklahoma,
Attorneys for Plaintiff.

DUDLEY, DUVALL & DUDLEY, of Counsel.

[Verification omitted.]

Endorsed: Filed in District Court on October 30, 1942.

Answer.

11 Come now the defendants in the above cause and for answer to the complaint of plaintiff states:

(1) Defendants admit the allegations of paragraph one of said complaint.

(2) Defendants admit the allegations of paragraph two of said complaint.

(3) Defendants admit that 225 cases of wines and liquors were delivered to plaintiff, consigned to the F. A. S. Officers Club Mess at Fort Sill, Oklahoma, as alleged in the complaint.

(4) Defendants deny the allegations of paragraph four of plaintiff's complaint, except in so far as the same are covered in the supplemental stipulation herein filed.

(5) Defendants admit the allegations of paragraph five of the complaint, as set forth in paragraph four of the stipulation herein filed.

(6) Defendants deny that said liquors were transported by plaintiff in interstate commerce, but admit the allegations of paragraph 6 of the complaint, as set forth in paragraph 5 of the aforesaid stipulation.

12 (7) Defendants admit the allegations of paragraph seven of the complaint, except that defendants deny that the Officers Mess or Officers Club Mess at Fort Sill was created or is an instrumentality of the Federal Government, and set up as such as alleged in said paragraph of said complaint.

(8) The allegations of paragraph eight of the complaint are conclusions of law; defendants deny the same except as consistent with the statutes and decisions upon the matters therein set forth.

(9) Defendants deny the allegations and conclusions set forth in paragraphs nine, ten, eleven, twelve and thirteen of said complaint.

Defendants, therefore, pray that plaintiff be denied the relief prayed for and that said complaint be dismissed.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
LEWIS R. MORRIS,
Attorneys for Defendants.

Dec. 7, 1942. Copy of foregoing answer received this date.

J. B. DUDLEY,
DUKE DUVALL,
Attorneys for Plaintiff.

Endorsed: Filed in District Court on December 11, 1942.

Stipulation.

13 The parties do hereby agree and stipulate, for the purposes of this law suit, as follows:

(1) That plaintiff is a corporation duly organized and existing under the laws of the State of Oklahoma, with its principal place of business at Oklahoma City therein; that the defendant Walter B. Johnson is the Commissioner of Public Safety of the State of Oklahoma; that the defendant T. R. Husted is the Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma, and the defendants B. A. West and Charles Riggs are his Deputies; that the defendant George Goff is the Sheriff of Oklahoma County, Oklahoma, and the defendants Mike McGrew and Lewis Kolb are his Deputies.

(2) That plaintiff is now, and was at all times mentioned herein and for many years past, engaged in the business of the transportation of commodities generally by motor vehicle in interstate and foreign commerce as
14 a common carrier for hire, and operates in and through and serves the States of Kentucky, Indiana, Illinois,

Missouri, Kansas, Oklahoma, and Texas and the Fort Sill and other United States Military Reservations, under and by virtue of authority granted to it by the Interstate Commerce Commission pursuant to the provisions of the Federal Motor Carrier Act of 1935, as amended, being Part II of the Interstate Commerce Act, 49 USCA, Chapter 8; that plaintiff is so authorized to serve the public in interstate commerce between East St. Louis, Illinois, St. Louis, Missouri, and Lawton, Oklahoma, and Fort Sill Military Reservation, U. S. A., via Oklahoma City; that among other commodities, plaintiff was and is authorized to transport wines and *spiritous* liquors, and has and had duly published and filed with the Interstate Commerce Commission its lawful tariffs quoting rates and charges for the shipment of said commodities over its line to the points and places it is authorized to serve.

(3) That on or about the 24th day of October, 1942, there was tendered by M. B. Gintz Company, as consignor, at East St. Louis, Illinois, to plaintiff, and accepted by it in the regular course of its business as a common carrier, a shipment consisting of 225 cases of wines and *spiritous* liquors, under the standard, uniform, straight bill of lading, a copy of which is attached hereto as Exhibit "A", and upon which shipment the freight rate provided in said tariffs was prepaid, consigned to the F. A. S. Officers Club Mess at Fort Sill Military Reservation, U. S. A.

(4) That said shipment was routed to Fort Sill, via Oklahoma City, Oklahoma, and plaintiff, while transporting the same in one of its trailers, on October 26, 1942, momentarily stopped said trailer at its Oklahoma City
15 terminal and dock to unload therefrom freight other than that destined for the Fort Sill Military Reservation and for points between Oklahoma City and Fort Sill Military Reservation; that it was the purpose of plaintiff, after unloading such freight, to load some 10,000 to 12,000 pounds of freight which it had accumulated at its Oklahoma City terminal for various directions and points, bound for Fort Sill and points intermediate between Oklahoma City and Fort Sill; that said freight would have made a truckload of 18,000 to 20,000 pounds; that it was the purpose of plaintiff to transport and deliver the aforesaid shipment

to destination in said Reservation in the road truck and trailer in which it was transported from point of origin, and without said shipment ever having been removed therefrom during its entire movement.

(5) That on said October 26, 1942, shortly after the arrival of the truck and trailer containing the aforesaid shipment at the Oklahoma City terminal of plaintiff, and while the same was being loaded with the additional freight above mentioned, and while said shipment was still in transit from its origin at East St. Louis, Illinois, to its destination within Fort Sill Military Reservation, and before it had come to rest, the defendants personally, with the exception of George Goff, came upon the premises of plaintiff at 311 South Western Avenue in Oklahoma City, Oklahoma, and forcibly seized and took possession of said shipment and transported the same away from said premises; that defendants, and each of them, since said seizure, have withheld and are continuing to so withhold possession of said shipment from plaintiff, and are interfering with its transportation to the consignee at the point of destination; that said shipment is now in the joint possession and custody of the defendants Walter B. Johnson and George Goff, their deputies, agents, servants and employees.

16 (6) That the Fort Sill Military Reservation site was acquired by the Federal Government from France long before Oklahoma became a State, and is now and has been, since prior to the admission of Oklahoma as a State to the Union, used exclusively for military purposes and for the performance of the functions of the War Department of the Federal Government; that the Officers Mess at Fort Sill was created and is maintained for the care, use and benefit of the Officers of the United States Army stationed at Fort Sill, and civilians are not entitled or permitted to use the facilities of such Officers Mess; that a large number of United States Army Officers live at said Officers Club and it is their only home and place of residence.

(7) That on the matters stipulated upon herein, no proof shall be necessary, and this stipulation is made in lieu of evidence but shall be without prejudice to the introduc-

tion of any additional proof, not inconsistent with the matters of fact agreed upon herein.

Dated this 24th day of November, 1942.

J. B. DUDLEY,
DUKE DUVALL,
Attorneys for Plaintiff.
MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
LEWIS R. MORRIS,
County Attorney, Okla. Co. Okla.,
Attorneys for Defendants.

Exhibit A.

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930.)

This Shipping Order must be legibly filed in, in ink, in indelible pencil, or in carbon, and retained by the agent.

Shipper's No. 09028

_____Company Agent's No. _____

Receive, subject to the classifications and tariffs in effect on the date of the issue of this shipping order. At East St. Louis, Ill., Oct. 24, 1942. From M. B. Gintz, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the condition on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purpose of notification only)

Consigned to F. A. S. Officers Club Mess 225

Destination Fort Sill, State of Okla. County of _____ Dock

Route

Delivering Carrier Car Initial Car No.

Subject to Section 7 of conditions if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

M. B. GINTZ

Per _____

12543

No. Packages	Description of Articles Special Marks, and Exceptions	Weight (Sub. to (Cor.)	Class or Rate
225	Merchandise	9000	232

Herman Yellow Transit

Ck. If charges are to be prepaid, write Col. or stamp here

"To be Prepaid."

To be Prepaid

Received 20880

to apply in prepayment of the charges on the property described hereon.

_____

Agent or Cashier

(Mail or street address of consignee—For purpose of notification only)

Consigned to F. A. S. Officers Club Mess 225
Destination Fort Sill, State of Okla. County of _____ Dock
Route
Delivering Carrier Car Initial Car No.

Subject to Section 7 of conditions if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.
M. B. GINTZ
Per _____

12543

Ck. If charges are to be prepaid, write Col. or stamp here
"To be Prepaid."
To be Prepaid
Received 20880
to apply in prepayment of the charges on the property described hereon.

No. Packages	Description of Articles Special Marks, and Exceptions	Weight (Sub. to (Cor.)	Class or Rate
225	Merchandise	9000	232

_____
Agent or Cashier
Per _____
(The Signature here acknowledges only the amount prepaid.)

Herman Yellow Transit

All Breakage or Shortage Must Be Reported Within 24 Hours

(Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Inter State Commerce Commission.)

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification. Shipping Order

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

Charges Advanced: $ _____

M. B. Gintz, Shipper, Per M. B. Gintz, L. T.
Permanent post-office address of shipper: 228 N. 7th St., East St. Louis, Ill.

**Agent Must Detach and Retain This Shipping Order and Must Sign the Original Bill of Lading.

Endorsed: Filed in District Court on November 25, 1942.

Supplemental Stipulation.

Come now the plaintiff and defendants herein, above named, and stipulate and agree, in addition to the facts heretofore stipulated in this cause, as follows:

(1) That the Fort Sill F. A. S. Officers Club is an organization composed of a membership consisting of several thousand Officers who are stationed and on duty at the United States Fort Sill Military Reservation, and such organization is managed by an Officers Club Secretary who is an Army Officer on active duty; that such club provides, among other things, an Officers Mess, living quarters for a number of Officers, lounges, reading rooms and other recreational facilities, and renders various club services for its membership.

(2) That prior to the ordering of the shipment in controversy, several hundred Officers, members of the Officers Club, gave to the Club Secretary their respective written orders for varying quantities of liquor, which orders named the brand and quantity desired and which were accompanied by check or money which was to be in payment for the respective orders; that these orders were assembled, tabulated and totaled by the Secretary, and who, acting for said Officers, telephoned the same to the shipper, M. B. Gintz Company at East St. Louis, Illinois, which accepted the same in said telephone conversation through its General Sales Manager; and, pursuant thereto, the shipper made up such orders and delivered them to the plaintiff as a common carrier for hire, for shipment under bill of lading referred to in the original stipulation and attached as an exhibit thereto, and prepaid the freight thereon, which shipment was consigned to the Officers Club in Fort Sill Military Reservation; that if the shipment had arrived, it would have been received at the Officers Club by

the Secretary of the Club for delivery to the aforesaid Officers, at the Club.

Dated this 1st day of December, 1942.

J. B. DUDLEY,
DUKE DUVALL,
Attorneys for Plaintiff.
MAC Q. WILLIAMSON, Atty. Gen.,
SAM H. LATTIMORE, Asst. Atty. Gen.,
LEWIS R. MORRIS, Co. Atty.,
Okla. Co., Okla.
Attorneys for Defendants.

Endorsed: Filed in District Court on December 1, 1942.

Opinion.

21 In this action the plaintiff seeks injunctive relief against the defendants for interfering with an interstate shipment of freight from East St. Louis, Illinois, to Fort Sill Military Reservation.

The facts disclosed are that the plaintiff is a corporation engaged in the business of transportation of commodities generally by motor vehicle in interstate commerce as a common carrier for hire, operating in and through and serving the states of Oklahoma, Kansas, Missouri, Illinois, and other states, and points within the geographical limits of said states under and by virtue of authority granted to it by the Interstate Commerce Commission pursuant to the provisions of the Federal Motor Carrier Act of 1935, as amended, being Part II of the Interstate Commerce Act, 49 U. S. C. A. chapter 8.

The defendant Walter B. Johnson is the Commissioner of Public Safety of the State of Oklahoma; the defendant T. R. Husted is the Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma; the defendants B. A. West
22 and Charles Riggs are the deputies of the defendant Husted; the defendant George Goff is the Sheriff of Oklahoma County, Oklahoma; and, the defendants Mike McGrew and Lewis Kolb are the deputies of the defendant Goff.

The Fort Sill F. A. S. Officers Club is an organization composed of several thousand officers who are stationed and on duty at the United States Fort Sill Military Reservation, and such organization is managed by an Officers Club secretary who is an army officer on active duty. Such club provides, among other things, an officers mess, living quarters for a number of officers, lounges, reading rooms and other recreational facilities, and renders various club services for its membership.

On or about October 24, 1942, there was tendered by M. G. Gintz Company, as consignor, at East St. Louis, Illinois, to plaintiff, and accepted by it in the regular course of its business as a common carrier, a shipment consisting of 225 cases of wines and *spiritous* liquors, under the standard, uniform, straight bill of lading, and upon which shipment the freight rate provided in said tariffs was prepaid, consigned to the F. A. S. Officers Club Mess at Fort Sill Military Reservation, U. S. A.

The shipment was routed to Fort Sill via Oklahoma City, Oklahoma, and the plaintiff, while transporting the same in one of its trailers, on October 26, 1942, momentarily stopped said trailer at its Oklahoma City terminal and dock to unload therefrom freight other than that destined for the Fort Sill Military Reservation and for points between Oklahoma City and Fort Sill Military Reservation. It was the purpose of the plaintiff, after unloading such freight, to load some 10,000 or 12,000 pounds of freight which it had accumulated at its Oklahoma City terminal for various directions and points, bound for Fort Sill and points intermediate between Oklahoma City and Fort Sill, which freight would have made a truckload of 18,000 to 20,000 pounds; and it was the purpose of the plaintiff to transport and deliver the aforesaid shipment to destination in said reservation in the truck and trailer in which it was transported
23 from point of origin, and without said shipment ever having been removed from said truck and trailer during its entire movement.

On said date of October 26, 1942, shortly after the arrival of the truck and trailer containing the aforesaid shipment at the Oklahoma City terminal of plaintiff, while the same was being loaded with the additional freight above mentioned, while said shipment was still in transit from its origin at

East St. Louis, Illinois, to its destination within Fort Sill Military Reservation, and before it had come to rest, the defendants personally, with the exception of George Goff, came upon the premises of the plaintiff at 311 South Western Avenue in Oklahoma City, Oklahoma, and forcibly seized and took possession of said shipment and transported the same away from said premises. The defendants, and each of them, since said seizure, have withheld and are continuing to withhold possession of said shipment from plaintiff, and are interfering with its transportation to the consignee at the point of destination; and said shipment is now in the joint possession and custody of the defendants Walter B. Johnson and George Goff, their deputies, agents, servants and employees.

The Fort Sill Military Reservation site was acquired by the Federal Government from France long before Oklahoma became a state, and is now and has been, since prior to the admission of Oklahoma as a state into the Union, used exclusively for military purposes and for the performance of the functions of the War Department of the Federal Government. The Officers Mess at Fort Sill was created and is maintained for the care, use and benefit of the officers stationed at Fort Sill, and civilians are not entitled or permitted to use the facilities of such Officers Mess. A large number of United States army officers live at said Officers Club and it is their only home and place of residence.

Prior to the ordering of the shipment in controversy, several hundred officers, members of the Officers Club, gave to the club secretary their respective written orders for varying quantities of liquor, which orders named the
24 brand and quantity desired and were accompanied by check or money to be used in payment of the respective orders. The orders were assembled, tabulated and totaled by the secretary, who, acting for said officers, telephoned the same to the shipper, M. B. Gintz Company, at East St. Louis, Illinois, which accepted the same in said telephone conversation through its general sales manager and pursuant thereto, the shipper made up such orders and delivered them to the plaintiff as a common carrier for hire, for shipment under bill of lading referred to above, and prepaid the freight thereon, which shipment was consigned to the Officers Club in the Fort Sill Military Reser-

vation, and had the shipment arrived, it would have been received at the Officers Club by the secretary of the club for delivery to the aforesaid officers at the club.

The Twenty-First Amendment to the Constitution of the United States provides in part:

"Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

"Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

This amendment became effective on December 5, 1933, having been duly ratified by the several States as provided in the Constitution.

On August 27, 1935, Congress enacted a law governing shipments into states having dry laws, 49 Stat. 877, sec. 202(b), 27 U. S. C. A. sec 122, which provides:

"The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

On March 2, 1939 the Legislature of Oklahoma passed an act, S. L. 1939, c. 16, 37 Okla. St. Ann. sec. 1, the enacting clause of which provides:

"An Act creating and providing for a permit system for the importation and transportation of intoxicating liquor, containing more than four per cent alcohol by volume,

into the State of Oklahoma for scientific, sacramental, medicinal, or mechanical purposes; forbidding importation of such liquor without permit; fixing fees; providing penalties; repealing Sections 2597 and 2598, Oklahoma Statutes, 1931; and declaring an emergency."

Section 1 (37 Okl. St. Ann. sec. 41) of this act provides:

"It shall be unlawful for any person, individual or corporate, to import, bring, transport, or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor, as defined by the laws of this State, containing more than four (4%) per cent of alcohol by volume, without a permit first secured therefor as hereinafter provided."

The question to be determined is whether or not the Fort Sill Military Reservation, the destination of the shipment of liquor designated in the shipping order attached to the stipulation of the parties, is a point "into the State of Oklahoma" within the decisions of our courts. This raises a number of questions.

First. Was the shipment one in interstate commerce?

In the case of Louisville & Nashville R. R. Co. v. Cook Brewing Co., 223 U. S. 70, 56 L. Ed. 355, where it was sought to obtain an injunction against the railroad company from refusing interstate shipment of liquor into what was known to be dry territory in the State of Kentucky, it was said:

"Beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce."

"A state cannot forbid a common carrier to transport intoxicating liquors from a consignor in one State to a consignee in another State."

26 "Until transportation of intoxicating liquor from one State to another is concluded by delivery to the consignee, the article transported does not become subject to state regulation."

"A state statute regulating shipments of common carriers, although legal as to intrastate shipments, if illegal as to interstate shipments imposes no obligation upon the carrier in regard thereto, nor affords any excuse for refusal to perform its duties as a carrier."

Applying this rule, the shipment originating in East St. Louis, Illinois, and destined for Fort Sill Military Reservation, was in interstate commerce and would not become subject to state regulation until delivery at its destination, unless the shipment is in some manner regulated by the Twenty-First Amendment and the laws enacted in support thereof.

Second. Was the Fort Sill Military Reservation a place within the State of Oklahoma over which the State had jurisdiction?

In the case of Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 29 L. Ed. 264, the railroad company sought to recover taxes imposed and paid on its property within the Fort Leavenworth Military Reservation, and the court held:

"When the United States acquire lands within the limits of a State by purchase, with the consent of the Legislature of the State, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, the Constitution confers upon them exclusive jurisdiction of the tract so acquired; but when they acquire such lands in any other way than by purchase with the consent of the Legislature, their exclusive jurisdiction is confined to the erections, buildings and land used for the public purposes of the Federal Government."

"In the act admitting Kansas as a State, there was no reservation of Federal jurisdiction over the Fort Leavenworth Military Reservation. The State of Kansas subsequently ceded to the United States exclusive jurisdiction over the same, 'saving further to said State the right to tax railroad, bridge, or other corporations, their franchises and property on said reservation.' Held, that the property and franchises of a railroad company within the reservation was liable to pay taxes in the State of Kansas, imposed according to its laws."

Justice Field, in writing the opinion in this case, cited and quoted from the case of Commonwealth v. Clary, 8 Mass. 72, as follows:

27 "The case referred to in which the subject was considered by a learned State court is that of Commonwealth v. Clary, 8 Mass. 72. There the Supreme Court of

Massachusetts held that the courts of the Commonwealth could not take cognizance of offences, committed upon lands in the town of Springfield purchased with the consent of the Commonwealth by the United States for the purpose of erecting arsenals upon them. That was the case of a prosecution against the defendants for selling spirituous liquors on the land without a license, contrary to a statute of the State. But the court held that the law had no operation within the lands mentioned. 'The territory,' it said, 'on which the offence is charged is agreed to have been committed is the territory of the United States, over which the Congress have exclusive power of legislation.' It added, 'that the assent of the Commonwealth to the purchase of this territory by the United States had this condition annexed to it, that civil and criminal process might be served therein by the officers of the Commonwealth. This condition was made with a view to prevent the territory from becoming a sanctuary for debtors and criminals; and from the subsequent assent of the United States to the said condition, evidenced by their making the purchase, it results that the officers of the Commonwealth, in executing such process, act under the authority of the United States. No offences committed within that territory are committed against the laws of this Commonwealth, nor can such offences be punishable by the courts of the Commonwealth unless the Congress of the United States should give to the said courts jurisdiction thereof'."

Thus, when the State recognizes the existing Federal jurisdiction or cedes, by legislative act, exclusive jurisdiction to the Federal Government over such lands, except such as it specifically reserves to itself, such act of cession establishes and limits that jurisdiction. Such was the holding in Standard Oil Company of California v. California, 291 U. S. 242, 78 L. Ed. 775, where the State of California undertook to lay and collect an excise tax upon every distributor for each gallon of motor vehicle fuel "sold and delivered by him in the state."

The Standard Oil Company of California, a Delaware Corporation, sold and delivered to the Post Exchange, within the *Presidio* of San Francisco, 420 gallons of gasoline. It carried this to the Exchange's place of business in barrels or tanks by trucks. Both sale and delivery were

within the area long held and occupied by the United States for military purposes. Upon appeal to the Supreme Court of the United States, from a decision in favor of the
28 state, the case was reversed, the court holding as follows:

"A State is without power to levy a license tax in respect of the selling and delivery of goods on a military reservation included within the exterior limits of the State but over which the full legislative authority has been ceded to the United States by an Act of the State Legislature."

The court, after quoting the language used by the act of cession of jurisdiction by the state legislature, which act of cession is very similar to the act of the State of Oklahoma ceding jurisdiction over the Fort Sill Military Reservation used the following language:

"Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the *Presidio*, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well-founded; and the judgment below must be reversed.

"In three recent cases—Arlington Hotel Co. v. Fant, 278 U. S. 439, United States v. Unzeuta, 281 U. S. 138, and Surplus Trading Co. v. Cook, 281 U. S. 647—we have pointed out the consequences of cession by a State to the United States of jurisdiction over lands held by the latter for military purposes. Considering these opinions, it seems plain that by the Act of 1897 California surrendered every possible claim of right to exercise legislative authority within the *Presidio*—put that area beyond the field of operation of her laws."

The question has been raised over the manner in which the Fort Sill Military Reservation was acquired by the United States. It has been stipulated that the territory comprising it was acquired by the United States. It has been stipulated that the territory comprising it was acquired from France long before there was a Territory or State of Oklahoma. The Act of Congress of May 2, 1890, 26 Stat. at Large 81, known as the Organic Act designated the boundaries of the Territory of Oklahoma. The lands com-

prising the original Fort Sill Military Reservation are not embraced within those boundaries.

The Act of Congress of March 3, 1901, 31 Stat. 1093, provided for the opening for settlement of the Kiowa-Comanche County including the territory around the Fort Sill
29 Military Reservation. The Fort Sill and El Reno Military Reservations were not opened for settlement under that act, but were referred to in locating the land offices in that enactment, as follows:

"Section 3. The President is hereby authorized to establish two additional United States land districts and land offices in the Territory of Oklahoma, * * * one of the land offices shall be located at El Reno, in the County of Canadian; and the other shall be located at the county seat nearest Fort Sill. * * *"

It will be observed that one of the land offices was to be established at El Reno, which was an established town within the Territory of Oklahoma, and the other to be in a county seat town "nearest Fort Sill."

The Act of Congress of June 16, 1906, 34 Stat. 267, known as the Enabling Act, which provided for the creation of the State of Oklahoma, provided or designated no different boundaries, but began as follows:

"Be it enacted * * * That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of *Oklahoma*, * * *."

In the Constitution of the State of Oklahoma, adopted in convention June 16, 1907, ratified by the people September 17, 1907, and approved by Presidential Proclamation November 16, 1907, in *Sections* 3, Article I, we find the following language:

"The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, * * *."

It is therefore apparent that the original Fort Sill Military Reservation was never a part of, or under the juris-

diction of, the Territory or State of Oklahoma, except as such jurisdiction has been specifically ceded to the State by Congress.

In view of this situation, it is both interesting and enlightening to view some of the decisions of the Oklahoma Supreme Court in its interpretation of the law governing the situation, as litigation involving the question arose from time. It is quite clear that it very definitely has determined its attitude toward it and has never intimated that the Fort Sill Military Reservation was a part of the State of Oklahoma although being *situated* within its boundaries.

In the case of Utley et al. v. State Industrial Commission et al., 176 Okla. 255, 55 P. 2d 762, Utley was given an award by the Industrial Commission for injuries received during his employment at the Fort Sill Military Reservation. The employer and insurance carrier instituted an action to review the award, contending that the Workmen's Compensation Act of Oklahoma was not applicable and that the Industrial Commission was without jurisdiction over the injuries received by Utley in the course of his labor performed on the United States Military Reservation at Fort Sill. The court held:

"The Oklahoma Workmen's Compensation Act does not apply to injuries occurring within the Fort Sill Military Reservation, although such place is within the exterior boundaries of the state, since exclusive jurisdiction of such place was ceded to the United States."

In the body of the opinion the court said:

"The Fort Sill Military Reservation was set aside and designated as such before the state of Oklahoma was created, and the land constituting that reservation was not purchased by the federal government from the state of Oklahoma within the meaning and for the purposes included within article 1, sec. 8, cl. 17, of the Constitution of the United States, but was owned by the United States by cession from France many years before Oklahoma became a state.

"In 1913 our state Legislature by enactment (Laws 1913, c. 52) ceded exclusive jurisdiction to the United States of

all territory 'now owned by the United States and comprised within the limits of the Military Reservations of Fort Sill,' reserving the right, however, to serve civil or criminal process within the reservation in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed outside of the reservation."

And again in the case of In re Annexation of Reno Quartermaster Depot, etc., 180 Okla. 274, 69 P. 2d 659, it was held:

"Article 1, sec. 8, U. S. Constitution confers exclusive jurisdiction upon Congress to legislate in respect to
31 military reservations and similar instrumentalities of the federal government, and the general school laws of this state can have no application to the military reservations located within the state."

In the body of the opinion, the court commented upon and set out in detail the Cession Act of 1913 of the State of Oklahoma as follows:

"The lands comprising the Fort Reno Military Reservation belonged to the United States and were used as a military reservation long before the territory or the state of Oklahoma came into existence, and when the state was organized, these lands were reserved by the federal government, and Congress has passed no act specifically yielding jurisdiction over the Reservation to the state. Nevertheless, the Fourth Legislature of the state of Oklahoma, assuming that statehood conferred upon the state the right of sovereignty over all the territory within its boundaries, and desiring to take cognizance of the jurisdiction essentially belonging to the federal government over the Reservation, and reserving to the state only such jurisdiction and powers generally recognized by the federal government in such cases as not inconsistent with the free and effective use of the lands for the purposes intended, passed the Act of March 17, 1913, ceding to the federal government exclusive jurisdiction, with certain reservations, said act being chapter 52, section 1, Sess. Laws 1913, and brought forward as section 12253, O. S. 1931 (80 Okla. St. Ann. sec. 4), being as follows: 'That exclusive jurisdiction be, and the same is hereby ceded to the United States over all the territory

now owned by the United States and comprised within the limits of the Military Reservations of Fort Sill, in Comanche County, and Fort Reno, in Canadian County, as declared from time to time by the President of the United States, and over such lands as may hereafter be acquired for the enlargement of said reservations; provided, however, that the State of Oklahoma reserves the right to serve civil or criminal process within said reservations in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of such cessions and reservations; provided, further, that the State of Oklahoma reserves the right to tax railroad companies and other corporations and their franchises and property on said reservations; and provided, further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservation for military purposes.' " (Emphasis supplied.)

In the reply brief, counsel for defendants cite the most recent expression of the Supreme Court of Oklahoma in the case of Ottinger Brothers et al. v. Clark et al., decided November 17, 1942, and reported in the Law Journal of the Oklahoma Bar Association of November 21, 1942, at
32 page 1460. In this case the Oklahoma Workmen's Compensation Law again was before the court with reference to injuries received at the Fort Sill Military Reservation and the court held:

"Where an express cession of jurisdiction, with reservations, is made by the State Legislature in favor of the United States, Congress has power to relinquish or recede to the state the jurisdiction thus acquired, without abandoning the property or its legitimate use.

"Jurisdiction, with reservations, acquired from a state, although exclusive while it subsists, is to be regarded as a mere suspension of the state jurisdiction and, therefore, an act of Congress relinquishing such jurisdiction, or any part thereof, and receding it to the state, is effective for that purpose, without any acceptance or assent by the state."

In the body of the opinion the court said:

"In 1936 Congress conferred upon or receded to the state the jurisdiction to extend the Compensation Law to the

reservation. See Act of June 25, 1936, 49 Stat. at L. 1938, 40 USCA sec. 290."

* * * * * *

"In the present case the state had full political jurisdiction over the military reservation until the statute of cession was enacted in 1913. The effect of that statute was to place in abeyance the powers of the Legislature to extend the laws of the state to the reservation. When the Workmen's Compensation Law was enacted in 1915 it did not extend to the reservation by reason of the prior cession of jurisdiction. Utley v. State Industrial Commission, supra. But that law was merely in suspension or abeyance so far as the reservation was concerned. As long as the United States retained the exclusive right to legislate concerning that area as ceded by the state, the state could not apply the statute. However, when Congress receded the jurisdiction to the state by the 1936 Act, supra, the law was no longer in abeyance and applied, ipso facto, to the reservation. We have no fault to find with the opinion in the Utley case, supra, and the opinion under the then existing law was undoubtedly correct. The Utley case is readily distinguishable from the case at bar. From statehood until the Act of 1913, supra, was enacted, the state, not the United States, had political control of the reservation. The United States then, after 1913, had jurisdiction over the reservation until the Act of Congress of 1936, supra. The Utley case was decided before the enactment of the last above-mentioned act.

"* * * The question herein is not one of the adoption of state laws, nor an attempted delegation of jurisdiction by Congress, but a question of relinquishing and revesting in the state a portion of the jurisdiction that the state had temporarily suspended in itself and vested in the
33 Federal Government by its act of cession of 1913."

* * * * * *

"Petitioners also contend that the Act of Congress of 1936, supra, was not accepted by the State Legislature until June, 1941, which acceptance was not in effect at the time the accident herein occurred, and for that further reason the Industrial Commission was without jurisdiction to make the award. We think this contention is without merit. The case of Renner v. Bennett, supra, is authority for the rule

that acceptance of the act of recession is unnecessary. If an acceptance was necessary, then it would have been equally necessary that the Congress of the United States accept the Act of the Legislature of 1913 ceding jurisdiction to the United States. That was never done. But as shown in Fort Leavenworth Railroad Co. v. Lowe, supra, and St. Louis-San Francisco R. Co. v. Satterfield, supra, said act was effective without any acceptance by Congress. The Act of Congress of 1936, supra, therefore, became effective immediately after its final passage."

This court cannot agree to the above conclusion, "from statehood until the Act of 1913, supra, was enacted, the state, not the United States, had political control of the reservation." The state never has had, does not now have, and cannot have, jurisdiction over the reservation except as it has been, or might be, ceded by the United States from time to time. This it seems was in the mind of the writer of the opinion in the case of In re Annexation of Reno Quartermaster Depot, supra, wherein the following language was used:

"Nevertheless, the Fourth legislature of the State of Oklahoma, assuming that statehood conferred upon the state the right of sovereignty over all the territory within the boundaries * * * passed the Act of March 17, 1913 * * *."

But regardless of how the question may be viewed by that court, the determination of the extent of the jurisdiction of the United States over the Fort Sill Military Reservation is a question for adjudication by the federal courts since it is construing a cession made by Congress and not a cession from the State of Oklahoma, except as it may apply to such additions as have been made to the original Fort Sill Military Reservation from lands over which the State of Oklahoma at one time had exclusive jurisdiction. And the decisions all seem to be in harmony with the view that
34 when the Act of March 17, 1913, was enacted the United States had exclusive jurisdiction over the reservation except for the purposes reserved to the state by Congress.

From these decisions and the language used therein, and the interpretation given by the Supreme Court of the United

States of such enactments, it is plain that exclusive jurisdiction over the Fort Sill Military Reservation is in the United States, except for purposes specifically reserved by the State of Oklahoma in its legislative enactment of March 17, 1913. Those reservations were to serve civil and criminal process, to tax railroad companies and other corporations and their franchises and property on said reservations, and as was stated in Standard Oil Co. v. California, supra, by that act it "put that area beyond the field of operation of its laws," unless the jurisdiction was widened or extended over the reservation by the Twenty-First Amendment to the Constitution of the United States and the laws enacted by virtue thereof.

That brings us to the third and main question involved in the light of the decisions. Was the destination of the shipment "into the State of Oklahoma?"

In the case of Collins v. Yosemite Park & Curry Co., 304 U. S. 518, 82 L. Ed. 1502, many of the points involved in the case at bar were discussed, and the decisions of the courts relating thereto applied. This case appears to be the latest expression of the Supreme Court of the United States on the subject and is binding upon this court. The Yosemite Park & Curry Company brought suit seeking to enjoin the State Board of Equalization and the Attorney General from enforcing the "Alcoholic Beverage Control Act" of the State of California within the limits of *Yosemmite* National Park. Among other allegations of the complaint one was made that the appellants threatened to seize beverages on, or being transported to, appellee's premises, demand rendition of reports and keeping of accounts, and threatened to institute civil and criminal proceedings against appellee for violation of the act. A permanent injunction was granted on several grounds. The Supreme Court on appeal reversed the lower court with instructions as to certain phases of the case. In the opinion, however, it declared the law very clearly on other phases of the case as it pertains to the case at bar, the court holding as follows:

"The United States, owning land set aside as a national park within the boundaries of a State, may constitutionally accept from the State a cession of jurisdiction over it. The

jurisdiction ceded need not be exclusive but may be limited by reservations of powers in the State, such as the power to tax persons and their property on the land included."

"It is not essential to valid acquisition of jurisdiction by cession from a State that the land involved shall be acquired by the United States for one of the purposes specified in Clause 17, sec. 8, Art. I, of the Constitution."

* * * * *

"* * * The other lands composing the Park have remained in the proprietorship of the United States since the time of the Treaty. By Act of April 15, 1919, California granted exclusive jurisdiction over the Park as a whole, saving certain rights, including the right 'to tax persons and corporations, their franchises and property' on the lands included; and this was accepted by the Act of Congress of June 2, 1920."

This is substantially what occurred in the case at bar, by the Act of the Oklahoma Legislature on March 17, 1913. Continuing from the Collins Case, supra, the court further held:

"2. (1) That whatever the status of jurisdiction existing at the time of their enactment, these Acts of cession and acceptance, of 1919 and 1920, are to be taken as declarations of the agreements, reached by the respective sovereignties, State and Nation, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park.

"(2) Distinguished from the right to tax, the power to regulate the sale and use of alcoholic beverages was not reserved by the State, and such regulations are not enforceable in the Park."

* * * * *

"(4) This reservation does not authorize the State to exact, for the sale or importation of alcoholic beverages in the Park, the fees for licenses which are provided by sec. 5 of the California Alcoholic Beverage Control Act, those provisions being regulatory in character."

* * * * *

36 "4. The Twenty-First Amendment did not confer upon a state the power to regulate the importation of intoxicating liquors into territory over which it has ceded to the United States exclusive jurisdiction."

In the body of the opinion, the court used this language:

"The State makes the point that sec. 2 of the XXI Amendment gives it the right to regulate the importation of intoxicating liquors. Reliance for enforcement is placed upon secs. 49 and 49.2 of the Alcoholic Beverage Control Act. The argument for this claim is bottomed upon our decision in State Board of Equalization v. Young's Market Co., 229 U. S. 59, where we held that a statute imposing a $500 license fee for importing and a $750 license fee for brewing beer did not violate the commerce clause or the equal protection clause, because the words of the XXI Amendment 'are apt to confer upon the State the power to forbid all importations' and 'the State may adopt a lesser degree of regulation than total prohibition.' The lower court was of the opinion that though the Amendment may have increased 'the state's power to deal with the problem * * *, it did not increase its jurisdiction.' With this conclusion, we agree. As territorial jurisdiction over the Park was in the United States, the State could not legislate for the area merely on account of the XXI Amendment. There was no transportation into California 'for delivery or use therein.' The delivery and use is in the Park, and under a distinct sovereignty. Where exclusive *jurisdiction* is in the United States, without power in the State to regulate alcoholic beverages, the XXI Amendment is not applicable." (Emphasis supplied.)

The writer of this opinion may have his personal views with reference to the general policy of permitting the use of intoxicants within military reservations within so-called "dry states", however, in this case the facts are stipulated by the parties and the law has been declared by the Supreme Court of the United States, and, therefore, no alternative is left this court but to apply the declared law to the admitted facts.

The issues must be determined in favor of the plaintiff. A mandatory injunction will issue directing the defendants to return the shipment in question to the plaintiff for delivery to its original destination. An exception is allowed defendants.

A form of judgment consistent with this opinion may be submitted within ten days from this date.

EDGAR S. VAUGHT,
United States District Judge.

Dated this 24th day of December, 1942.

Endorsed: Filed in District Court on Dec. 24, 1942.

Findings of Fact, Conclusions of Law, and Decree.

37 Now on this 11th day of December, 1942, the above entitled cause comes regularly on for trial pursuant to assignment, plaintiff appearing by its representatives and its attorneys of record, and defendants appearing in person and by their attorneys of record. The parties announce ready for trial, and all of the facts are agreed upon by admissions in the pleadings and written stipulations of fact. After argument by counsel, the case is submitted upon said agreed facts and upon written briefs, and the court takes the matter under advisement.

Now on this 24th day of December, 1942, the matter comes on for decision, and the court makes the following findings of fact, conclusions of law and decree:

Findings of Fact.

38 The court finds the facts are as agreed upon by the parties in the admissions contained in the pleadings and in the written stipulations of the parties on file herein, and the court adopts such agreed facts as its findings of fact.

Conclusions of Law.

The court concludes as a matter of law, as follows:

(1) That the court has jurisdiction of the parties and of the subject matter.

(2) That the shipment of liquor in controversy and described in the complaint was moving in interstate commerce at the time of its seizure by the defendants.

(3) That Fort Sill Military Reservation is under the exclusive jurisdiction and dominion of the Federal Government, and the State of Oklahoma has no jurisdiction over it,

except in very limited respects where Congress has ceded jurisdiction to the State and which are of no effect upon or pertinent to the issues in this case.

(4) That said shipment, being destined for delivery in Fort Sill Military Reservation, was a shipment through the State of Oklahoma, and was not transported into the State for delivery or use therein.

(5) That said shipment was lawfully moving in interstate commerce at the time of its seizure, and not in violation of the laws of the State of Oklahoma or of the United States, and the defendants unlawfully seized the same and are unlawfully retaining possession thereof.

39 (6) That defendants should be required to return the shipment to the plaintiff, and enjoined from interfering with its delivery to its destination; that the complaint is well taken and plaintiff is entitled to the relief sought, and the mandatory injunction should issue as prayed for therein.

Decree.

It Is Therefore Considered, Ordered, Adjudged and Decreed by the court that the defendants, Walter B. Johnson, T. R. Husted, B. A. West, Charles Riggs, George Goff, Mike McGrew and Lewis Kolb, their agents, servants, employees and successors, be, and they are hereby ordered, directed and mandatorily enjoined to forthwith return to the plaintiff, Yellow Cab Transit Company, at its terminal at 311 South Western Avenue, Oklahoma City, Oklahoma, the shipment of liquor seized by them from the plaintiff at said terminal on or about October 26, 1942, and that said defendants, their agents, servants, employees and successors, be and hereby are permanently restrained and enjoined from further intertering with the interstate movement and delivery of said shipment to its *desitnation* by plaintiff.

Dated at Oklahoma City, Oklahoma, this 2nd day of January, 1943.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed in District Court on Jan. 2, 1943.

Notice of Appeal to the Circuit Court of Appeals.

40 Notice is hereby given that Walter B. Johnson, T. R. Husted, B. A. West, Charles Riggs, George Goff, Mike McGrew and Lewis Kolb, defendants, above named, hereby appeal to the Circuit Court of Appeals for the Tenth Circuit, from the final judgment and decree entered in this action on January 2, 1943.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
Attorneys for Appellants.

Endorsed: Filed in District Court on Jan. 9, 1943.

(Clerk's Certificate to Transcript.)

United States of America, Western District of Oklahoma, ss.

44 I, Theodore M. Filson, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court in case No. 1145 Civil, Yellow Cab Transit Company, a corporation, Plaintiff, vs. Walter B. Johnson, et al., Defendants, as full, true and complete as the said transcript purports to contain and as called for by the Designation of record above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at Oklahoma City, in said District, this 21st day of January, A. D. 1943.

THEODORE M. FILSON, Clerk,
(Seal) By GRACE B. DAVIS, Deputy.

Filed February 13, 1943. Robert B. Cartwright, Clerk.

Order.

On this 2nd day of February, 1943, coming on to be heard, the motion of defendants, Walter B. Johnson and T. R. Husted, for an order joining as defendants, J. M. Gentry

and Ivan Kennedy, and it appearing that since the judgment of the court herein and since the filing and service of the notice of appeal, the said Walter B. Johnson has been succeeded in office as Commissioner of Public Safety of the State of Oklahoma by said J. M. Gentry, and the said T. R. Husted has been succeeded in office as Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma by Ivan Kennedy, and that said successors in office should be properly joined as parties defendant herein, and it further appearing that said J. M. Gentry and said Ivan Kennedy have given their assent to the making of an order joining them as said parties.

It is therefore ordered that the said J. M. Gentry and said Ivan Kennedy, as such successors in office of said Walter B. Johnson and T. R. Husted, be and they are hereby joined as parties defendant and as parties appellant in this action.

It is further ordered that the Clerk transmit a certified copy hereof to the Clerk of the Circuit Court of Appeals to be incorporated and become a part of the transcript of record on appeal.

EDGAR S. VAUGHT, District Judge.

Endorsed: Filed Feb. 2, 1943. Theodore M. Filson, Clerk, By Grace B. Davis, Deputy.

Certified Copy.

I, Theodore M. Filson, Clerk of the United States District Court in and for the Western District of Oklahoma, do hereby certify that the annexed and foregoing is a true and full copy of the original Order Joining Parties Defendant, filed February 2, 1943, in case No. 1145, Civil, Yellow Cab Transit Company, a corporation, Plaintiff, vs. Walter B. Johnson, et al., Defendants, as the same appears on file in my office. • • •

In Testimony Whereof, I have hereunto subscribed my

name and affixed the seal of the aforesaid court at Oklahoma City, this 3rd day of February, A. D. 1943.

THEODORE M. FILSON, Clerk,
By GRACE B. DAVIS, Deputy Clerk.

(Seal)

Filed February 15, 1943. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of Submission.

Thirtieth Day, March Term, Friday, May 21st, A. D. 1943. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard, Sam H. Lattimore, Esquire, appearing for appellants, J. B. Dudley, Esquire, and Duke Duvall, Esquire, appearing for appellee.

On motion, appellants were granted leave to file twenty printed copies of their brief herein out of time, which was accordingly done.

Thereupon this cause was argued by counsel and was submitted to the Court.

Opinion.

[July 26, 1943.]

Sam H. Lattimore, Asst. Atty. Gen., State of Oklahoma (Mac Q. Williamson, Atty Gen., State of Oklahoma and George Miskovsky, Co. Atty., Oklahoma County, Oklahoma) were with him on the brief for appellants.

J. B. Dudley and Duke Duvall (Dudley, Duvall & Dudley were with them on the brief) for appellee.

Before Phillips, Bratton, and Murrah, Circuit Judges.

Phillips, Circuit Judge, delivered the opinion of the court.

The F. A. S. Officers Club is an organization composed of several thousand army officers who are on duty at the United States Fort Sill Military Reservation.[1] The Club is managed by a secretary who is an army officer in active service. It provides, among other things, an officers' mess, living quarters for a number of officers, lounges, reading rooms, and other recreational facilities, and renders various club services to its members.

[1]Hereinafter called the Reservation.

Prior to October 24, 1942, several hundred members of the Club gave to the Club secretary their individual written orders for varying quantities of intoxicating liquor. These orders designated the brand and quantity desired and were accompanied by checks or money to pay for such intoxicating liquor. The Club secretary, acting for such officers, assembled, tabulated, totaled, and forwarded these orders to M. B. Gintz Company, at East St. Louis, Illinois. The Gintz Company accepted the orders and in fulfillment thereof, on October 24, 1942, delivered to Yellow Cab Transit Company[2] at East St. Louis, on a uniform bill of lading, 225 cases of wine and spirituous liquors, consigned to F.A.S. Officers Club Mess, at the Reservation.

While such shipment was in the possession of the Transit Company as a common carrier and in the course of transit from East St. Louis to the Reservation, but while it was momentarily stopped at the terminal and dock of the Transit Company at Oklahoma City, Oklahoma, it was seized by Johnson, Commissioner of Public Safety of the State of Oklahoma, Husted, Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of Oklahoma, West and Riggs, deputies under the Superintendent, and McGrew and Kolb, deputy sheriffs of Oklahoma County, Oklahoma,[3] and was transported to and placed in a vault in the county courthouse of Oklahoma County, where it is held under the claim that it is an illegal shipment of intoxicating liquor subject to confiscation and destruction.

Had the shipment been delivered at the Reservation, it would have been received by the secretary of the Club for delivery to the officers who had placed the order.

This action was commenced by the Transit Company against the state enforcement officers for a mandatory injunction requiring them to hold the shipment in status quo pending the determination of the action and requiring them to return the shipment to the Transit Company and to refrain from interfering with the Transit Company's possession and movement of such shipment in interstate commerce to its destination.

---

[2]Hereinafter called the Transit Company.

[3]Hereinafter called the state enforcement officers.

From a judgment granting the relief prayed for, the state enforcement officers have appealed.

The Reservation is located wholly within the exterior boundaries of Oklahoma. It was acquired by the United States from France long before Oklahoma became a state. Since prior to the admission of Oklahoma as a state it has been, and it now is used exclusively for military purposes and for the performance of the functions of the War Department of the United States. In 1913, the state of Oklahoma enacted a statute ceding exclusive jurisdiction over the Reservation, with certain exceptions not here material, to the United States.[4]

Oklahoma has power under the Twenty-first Amendment to forbid all importations of intoxicating liquor into the state or to adopt a lesser degree of regulation than total prohibition.[5] It may also require a permit for the transportation of intoxicating liquor in interstate commerce through the state as a means of establishing the identity of those who engage in such transportation and their routes and points of destination and of enabling local officers to take appropriate measures to insure transportation without diversion.[6]

Oklahoma has not enacted any statutes regulating the transportation of intoxicating liquor through the state. It requires a permit for transportation of liquor into the state.[7]

While the Twenty-first Amendment increased the power of the state with respect to importation into the state, it did not extend the territorial jurisdiction of the state. Territorial jurisdiction over the Reservation is in the United States, a distinct sovereignty, and the Twenty-first Amendment gave the state no power to prohibit importation of intoxicating liquor into the Reservation or to regulate the transportation, possession, sale, or other disposition of such liquor within the Reservation. There was no transportation into Oklahoma for delivery or use therein. The shipment

---

[4] See 80 O. S. 1941, Sec. 4;
Act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. A. Sec. 290;
Act of October 9, 1940, 54 Stat. 1059, 4 U. S. C. A. Secs. 13-13.

[5] State Board of Equalization v Young's Market Co., 299 U. S. 59;
Mahoney v. Joseph Triner Corporation, 304 U. S. 401.

[6] Duckworth v. Arkansas, 314 U. S. 390, 396.

[7] 37 O. S. 1941, Secs. 41-45.

was consigned for delivery in the Reservation.[8] We conclude, therefore, that the seizure by the state enforcement officers was without warrant of law and was wholly illegal.

The Assimilative Crimes Act[9] provides that whoever, within the territorial limits of a state, within or upon any lands reserved, or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, shall do any act or thing which is not made penal by any act of Congress, but which if committed within the jurisdiction of the state, by the laws thereof in force on February 1, 1940, would be penal, shall be deemed guilty of a like offense and subject to a like punishment.

The Assimilative Crimes Act adopted, for the government of the designated places under the exclusive or concurrent jurisdiction of the United States, the criminal laws in force, on the date mentioned in the Act, in the several states within which such places are situated, in so far as such laws have not been displaced by specific acts of Congress. By adoption they became Federal laws in force in the designated places.[10]

It is urged that the statutes of Oklahoma hereinafter referred to were put in force in the Reservation as Federal statutes by the Assimilative Crimes Act, and that by virtue thereof it is unlawful to import intoxicating liquor into the Reservation, to keep or maintain a club room in which intoxicating liquor is received, kept, or stored for distribution or division among the members of the Club, to receive intoxicating liquor from a common carrier, or to possess intoxicating liquor; and it is asserted that relief should have been denied by virtue of the maxim *ex dolo malo non oritur actio*. In dealing with this contention we assume, but do not decide, that the Oklahoma penal statutes relating to intoxicating liquor were put in force in the Reservation as Federal statutes by the Assimilative Crimes Act; neither do we decide that, if importation into the Reservation would violate

---

[8] See Collins v. Yosemite Park Co., 304 U. S. 518.

[9] 18 U. S. C. A. Secs. 451, 468.

[10] Franklin v. United States, 216 U. S. 559, 568;
United States v. Press Publishing Company, 219 U. S. 1, 8;
Puerto Rico v. The Shell Company, 302 U. S. 253, 266.

a Federal statute, injunctive relief against the unlawful acts of the enforcement officers should be denied.[11]

Sec. 4, ch. 153, O. S. L. 1933 (37 O. S. A. §31) provides that it shall be unlawful for any person to have or keep in excess of one quart of intoxicating liquor "whether such liquor be intended for the personal use of the person so having and keeping the same or not." The foregoing section was originally enacted as § 4, ch. 70, O. S. L. 1910-11. In Ex parte Wilson, 6 Okl. Cr. 451, 119 P. 596, it was held unconstitutional on the ground that it is not within the police power of the state to prohibit possession of intoxicating liquor for personal use.

Sec. 5, ch. 70, O. S. L. 1910-11 (37 O. S. A. § 32)[12] was unconstitutional for the same reason. Morse v. State, 63 Okl. Cr. 445, 77 P. 2d 757, 763, which cited Ex Parte Wilson, supra, with approval. See, also, Brikey v. State, 55 Okl. Cr. 451, 32 P. 2d 743, 744. It was superseded by § 6, ch. 26, O. S. L. 1913, as amended by § 3, ch. 153, O. S. L. 1933 (37 O. S. A. § 82).[13] The last-mentioned section does not make mere possession of intoxicating liquor unlawful; it merely makes possession of in excess of one quart of intoxicating liquor prima facie evidence of an intention to convey, sell, or otherwise dispose of such liquor; and the Oklahoma Criminal Court of Appeals has repeatedly held that mere possession of intoxicating liquor without an intent to sell, barter, or give away such liquor does not constitute an offense under the Oklahoma statutes.[14] We conclude, therefore, that the possession of intoxicating liquor for per-

---

[11] Cf. Leisy v. Hardin, 135 U. S. 100;
Bowman v. Chicago and Northwestern Ry. Co., 125 U. S. 465;
McFarland v. American Sugar Refg. Co., 241 U. S. 79, 84-5;
Barnett v. State, —— Ala. ——, 9 So. 2d 267, 268;
McCanless v. Graham, —— Tenn. ——, 146 S. W. 2d 137, 138.

[12] It provided that it should be unlawful for any person to have or keep in or about his place of residence more than one gallon of intoxicating liquor.

[13] Whitwell v. State, —— Okl. Cr. ——, 114 P. 2d 489, 490;
Young v. State, —— Okl. Cr. ——, 123 P. 2d 294, 299.

[14] Whitwell v. State, —— Okl. Cr. ——, 114 P. 2d 489, 490;
Haltom v. State, 58 Okl. Cr. 117, 50 P. 2d 744, 746;
Hull v. State, 61 Okl. Cr. 12, 65 P. 2d 423, 425;
Stump v. State, —— Okl. Cr. ——, 92 P. 2d 616, 619;
Knighton v. State, —— Okl. Cr. ——, 79 P. 2d 1030, 1032;
Robinson v. State, —— Okl. Cr. ——, 108 P. 2d 196, 198.

sonal use and not for unlawful sale or other disposition is not prohibited in Oklahoma and, therefore, is not prohibited within the Reservation by virtue of the Assimilative Crimes Act.

Sec. 1, ch. 186, O. S. L. 1917 (37 O. S. A. § 38) provides that it shall be unlawful for any person to receive within Oklahoma any intoxicating liquor from a common or other carrier, or to possess in Oklahoma any intoxicating liquor received from a common or other carrier, and that its provisions shall apply to "such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage." Since, under the decisions in Ex parte Wilson and Morse v. State, supra, possession of intoxicating liquor for personal use may not be prohibited, it would seem that this section is unconstitutional. If it is beyond the power of the legislature to make unlawful the possession of intoxicating liquor for personal use, it must likewise be beyond its power to make unlawful the possession of intoxicating liquor for personal use received from a common carrier.

Sec. 3610, O. R. L. 1910, as amended by § 1, ch. 13, O. S. L. 1927 (37 O. S. A. § 6), provides that it shall be unlawful to keep or maintain any club room where intoxicating liquor is received, kept, or stored for sale or for distribution or division among members of such club. We cannot say upon the facts here presented that the receipt of such shipment by the secretary of the Club and the delivery to the officers of their several orders embraced in the shipment would constitute a violation by the Club of the foregoing section. It seems to us that under the facts it could not be said that the Club received, kept, or stored the liquor for sale or for distribution to its members. The distribution was not to be made among the members of the Club, but among the officers who had given the order. The Club's secretary merely acted as their agent. Indeed, counsel for the state enforcement officers in their brief say, "The club, of course, appears to have no actual connection with this liquor."

Sec. 3605, O. R. L. 1910, as amended by § 2, ch. 163, O. S. L. 1933 (37 O. S. A. § 1) makes it unlawful to "ship, or in any way convey" intoxicating liquor "from one place within this state to another place therein." This section deals entirely with intrastate transportation. It has no applica-

tion to transportation from without the state of Oklahoma into such state, or into the Reservation.

Sec. 1, ch. 16, O. S. L. 1939,[15] provides that it shall be unlawful to import into the state of Oklahoma intoxicating liquor containing more than four per cent. of alcohol by volume, without a permit therefor secured as provided in the Act. The Act provides for an application to the State Tax Commission for such a permit and for the issuance of the permit by the Tax Commission. We think it clear that this Act can have no application within the Reservation. Congress has made no provision for a permit and Oklahoma has no jurisdiction to require or grant permits for the importation of intoxicating liquor into the Reservation, or to otherwise regulate such importation.[16] Since there is no way to obtain a permit to import intoxicating liquor into the Reservation, one who imports liquor into the Reservation should not be held criminally responsible for not securing a permit, which he could not obtain. To hold otherwise would make the Oklahoma statute, by virtue of the Assimilative Crimes Act, not a prohibition against importation into the Reservation without a permit, but a total prohibition against such importation.

By the provisions of 10 U. S. C. A. § 1350, 31 Stat. 758, the sale of beer, wine, or intoxicating liquors in any post exchange, canteen, or army transport is prohibited. Here, there was no sale within the Reservation. The sale was consummated in East St. Louis. It was contemplated only that there should be a transportation of the intoxicating liquor into the Reservation and a delivery thereof to the Club secretary as agent for the army officers who placed the order. This, in our opinion, did not constitute a violation of § 1350, supra.

Accordingly, we conclude that the transportation of the intoxicating liquor into the Reservation and the delivery thereof to the Club secretary for delivery to the officers who joined in the order would not constitute a Federal offense under the Assimilative Crimes Act, or under § 1350, supra.

The judgment is AFFIRMED.

---

[15] 37 O. S. 1941, Secs. 41-48.
[16] Collins v. Yosemite Park Co., 304 U. S. 518.

Bratton, Circuit Judge, concurring:

The United States acquired by cession from France the lands comprising the Fort Sill Military Reservation in Oklahoma, and since long prior to the admission of the state into the Union, the Reservation has been used continuously and exclusively for military purposes of the United States. By statute, the state ceded to the United States exclusive jurisdiction over all territory owned by the United States and comprising the Reservation so long as the United States should own and hold the Reservation for military purposes, except that the state reserved the right to serve civil or criminal process therein in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in the state but outside the Reservation, and the further right to tax railroad companies and other corporations and their franchises and property within the Reservation. 80 O. S. 1941 § 4. The United States did not expressly accept the cession but that was unnecessary as it will be presumed in the absence of any dissent. Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525. By act of Congress, the United States consented that the several states should have authority to make their Workmen's Compensation Acts applicable to lands and premises owned by the United States within the exterior boundaries of such states. 49 Stat. 1938, 40 U.S.C.A. § 290. Oklahoma accepted the cession and extended its Workmen's Compensation Act accordingly. 85 O.S. 1941 § 4. And by act of Congress, the United States consented that the several states be empowered to extend their income, sales, and use tax acts to Federal areas within such states. 54 Stat. 1059, 4 U.S.C.A. §§ 13, 14. Aside from these exceptions, none of which has any material bearing here, the laws of Oklahoma as state laws do not have any force or effect within the Reservation. Fort Leavenworth R. R. Co. v. Lowe, supra; Collins v. Yosemite Park Co., 304 U. S. 518.

Section 272 of the Criminal Code, 18 U.S.C.A. § 451, and section 289 of such code, 18 U.S.C.A. § 468, commonly called the Assimilative Crimes Act, together, provide in effect that the doing or failure to do any act or thing on lands reserved or acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, which is not made penal by an act of Congress but which if com-

mitted within the jurisdiction of the state in which such lands are situated would constitute a penal offense, shall constitute a like offense and be subject to like punishment.

An existing statute in Oklahoma, 37 O.S. 1941 § 41, provides that it shall be unlawful to import or transport into the state intoxicating liquor containing more than four per cent of alcohol by volume, without a permit first secured therefor as thereinafter provided. And there are other state statutes making it penal to do certain things in respect to intoxicating liquor but it is unnecessary to detail them. However, the Assimilative Crimes Act does not make these state statutes effective as state laws within the Reservation. Where that act applies, it adopts as laws of the United States for the government of designated places under the exclusive jurisdiction of the United States the criminal laws of the respective states in which such places are situated. Under its provisions, the laws of the state become laws of the United States in respect of such a place. They have no effect whatever as laws of the state. Franklin v. United States, 216 U. S. 559; United States v. Press Publishing Co., 219 U. S. 1; Puerto Rico v. Shell Co., 302 U. S. 253.

The Twenty-first Amendment of the Constitution of the United States, and the Act of August 27, 1935, 49 Stat. 877, 27 U.S.C.A. § 122, each prohibit the transportation or importation of intoxicating liquor into a state in violation of the laws of such state. A state is therefore free to forbid the importation of intoxicating liquor in interstate commerce into its territorial boundaries or it may enact regulatory provisions for such importation. State Board v. Young's Market Co., 299 U. S. 59; Mahoney v. Triner Corp., 304 U. S. 401; Indianapolis Brewing Co. v. Liquor Control Commission, 305 U. S. 391. And it may impose reasonable regulations intended to safeguard the movement of such liquor in interstate commerce through the state, provided they do not constitute a substantial burden on such commerce. Duckworth v. Arkansas, 314 U. S. 390. But a state has no power to forbid the transportation in interstate commerce of intoxicating liquor through its territorial boundaries. United States v. Gudger, 249 U. S. 373; Williams v. Commonwealth, 192 S. E. 795. And that is true even though the shipment is enroute to a destination where

the manufacture and sale of such liquor is prohibited by state law. McCanless v. Graham, 146 S. W. (2d) 137; Barnett v. State, 9 So. (2d) 267.

This shipment crossed state lines and was in every essential respect a movement in interstate commerce. It originated in Illinois, and its destination was a point within the geographical boundaries of Oklahoma but wholly beyond the jurisdiction or control of the state in respect of the sale, possession, or use of intoxicating liquor. The state had no power, either under the sweep of the Twenty-first Amendment, as an attribute of sovereignty, or otherwise, to interfere by seizure and confiscation with such interstate commerce under color of preventing the importation of intoxicating liquor in violation of its local law. Cf. Collins v. Yosemite Park Co., supra.

Murrah, dissenting:

The State of Oklahoma has asserted the power to seize and confiscate a shipment of intoxicating liquor, while being transported by a common carrier to the Ft. Sill Military Reservation, which is enclaved within the State of Oklahoma. The asserted power to seize and confiscate the shipment of liquor in question is an attempted exercise of the police power of the State in its purest form, because it relates to a declared public policy, affecting the public morals of the State's inhabitants. The police power of the state is an indispensable prerogative of state sovereignty, and "at times the most insistent, and always one of the least limitable of the powers of government." Eubank v. Richmond, 226 U. S. 137, 142; See also Sligh v. Kirkwood, 237 U. S. 52, 59; Classon v. Indiana, 306 U. S. 439; Ziffrin Inc. v. Reeves, 308 U. S. 132. The wisdom of this declared policy is of course within the peculiar competence of the people of Oklahoma. The effect of the judgment of the lower court, as upheld by the majority, is to enjoin the asserted police power of the State, ancillary to the enforcement of its criminal laws, on the grounds that the laws are rendered inoperative by force of the transcendent Federal law.

It is difficult to discern from the expressions of the majority whether the transcendent power to be vindicated by

injunctive process springs from the paramount power of Congress to regulate interstate commerce, or the exclusive power of Congress to exercise authority over all places expressly committed to its jurisdiction by the Federal Constitution. (Art. 1, Sec. 8, Clause 17; Art. 6, Clause 2). See Pacific Coast Dairy v. Dept. of Agriculture, 318 U. S. 285; Cf. Pennsylvania Dairies v. Milk Control Commission, 318 U. S. 261.

In order to clearly define our differences, it should be here noted that I fully agree that the Ft. Sill Military Reservation, although located within the geographical boundaries of the State of Oklahoma, is an enclave wholly and exclusively within the jurisdiction of the Federal government, and that the State of Oklahoma is powerless to regulate any activities conducted thereon, except in respect to matters not material here. Furthermore, the shipment of liquor originated in Illinois, and at the time of its seizure was being transported by common carrier to the Ft. Sill Reservation; was thus moving in interstate commerce, and was entitled to protection and immunity as such, if it be regarded as a legitimate article of interstate commerce, the transportation of which is incidental to legitimate activities conducted within the reservation. Our point of difference is, that in my judgment the State of Oklahoma, by its Constitution and laws, makes it unlawful to possess, transport, furnish, or receive this particular shipment of intoxicating liquor, and it is therefore contraband and subject to seizure and confiscation under the laws of the State, and the Federal Government has by its laws not only consented to the operation of Oklahoma laws in respect to the particular commodity involved, but has also made the same acts a Federal offense when committed within the boundaries of the enclave. Consequently, the shipment is not a legitimate article of interstate commerce; there is no governmental function to protect; no legitimate interstate activity to immunize; and, no Federal legislation or policy to vindicate.

By its Constitution, Oklahoma has prohibited and declared unlawful the manufacture, sale, barter, giving away, or furnishing of intoxicating liquor within the State,[1] and by its laws has declared unlawful the importation into the

[1] Prohibition Ordinance to the Oklahoma Constitution. Sch. 43.

State of any intoxicating liquors for beverage purposes;[2] or to receive, directly or indirectly, any liquors, the sale of which is prohibited by the laws of Oklahoma, from a common or other carrier, or to possess the same, whether such liquors are intended for personal use or otherwise.[3] Oklahoma has also declared that the possession of more than one quart of intoxicating liquor is prima facie evidence of its illegal possession;[4] and it is unlawful to keep or maintain any club room where liquor is kept or stored for sale, or for distribution or division among the members of such club.[5] Thus by its network of laws, Oklahoma has made it plain that the possession of intoxicating liquors for beverage purposes is contrary to its public policy.

By force of the Assimilative Crimes Act,[6] any act or thing committed or omitted within the Ft. Sill Military Reservation, which is not made penal by an act of Congress, but which if committed or omitted within the State of Oklahoma, would be a violation of its criminal laws, is a violation of Federal law and punishable as such. Furthermore, by express Federal enactment, it is unlawful for any person to sell or deal in beer, wine, or any intoxicating liquors on the Military Reservation. Act of Feb. 2, 1901, 31 Stat. 758 (10 U.S.C.A. 1350). It follows therefore that it is a violation of the Federal law to import intoxicating liquors into the Reservation; to receive intoxicating liquors from a common or other carrier, whether intended for personal use or otherwise; to sell or otherwise furnish the same; and, the possession of more than one quart of intoxicating liquor on

---

[2] Laws 1939, Sec. 1-5 (37 U.S.C.A. 41-45. See Hayes v. United States, 112 F. 2d 417; Epps v. United States, 112 F. 2d 931; Flippin v. United States, 121 F. 2d 742, cert. denied 62 S. Ct. 184, 314 U. S. 677, 86 L. Ed. 542; Hinkle v. United States, 115 F. 2d 217.

[3] Laws 1917, ch. 186, Sec. 1 (37 O. S. A. 38). See DeHasque v. Atchison Ry. Co., 173 P. 73; Baldridge v. State, 194 P. 217; Walker v. State, 197 P. 520.

[4] Laws 1913, ch. 26, p. 48, Sec. 6; Laws 1923-24, ch. 123, p. 144, Sec. 1; Laws 1933, ch. 153, p. 339, Sec. 3. (37 O. S. A. 82). See Morse v. State, 77 P. 2d 757; Whitwell v State, 114 P. 2d 489, 490; Haltom v. State, 50 P. 2d 744, 746; Hull v. State, 65 P. 2d 423, 425; Stump v. State, 92 P. 2d 616, 619; Knighton v. State, 79 P. 2d 1030, 1032; Robinson v. State, 108 P. 2d 196, 198.

[5] Sec. 3610, R. L. 1910; Laws of 1927, ch. 13, Sec. 1. (37 O. S. A. 6).

[6] 18 U.S.C.A. 468, as last amended June 6, 1940, 54 Stat. 234. See United States v. Paul, 6 Pet. 141; Franklin v. United States, 216 U. S. 559, 568; United States v. Press Publishing Co., 219 U. S. 1, 8.

the reservation is prima facie evidence of its illegal possession. Furthermore, it is unlawful to maintain a club room in which intoxicating liquor is kept, or stored, for distribution among the members of the club.

It thus becomes sufficiently plain that the transportation of the intoxicating liquor is not incidental to any legitimate activities upon or within the Military Reservation, but would be illegal and contraband at the point of its destination. It is therefore not a legitimate article of interstate commerce. Interstate immunity against the operation of state criminal laws does not extend to articles moving in interstate commerce to an unlawful destination. If this be true, then the maxim, ex dolo malo non oritur actio, has cogent application, and there is no justifiable basis for injunctive relief by a Federal court.

In order to make out a case in equity, the majority hold that it is not unlawful to possess the liquor in question for one's personal use in Oklahoma, and it is therefore not unlawful to possess it on the Military Reservation. This conclusion is reached by holding the State statute (Laws of 1917, ch. 186, p. 350, Sec. 1 (37 O. S. A. 38), making it unlawful to receive the liquor from a common or other carrier, or to possess it, whether intended for personal use or otherwise, unconstitutional. Thus, it is said that the shipment violated no law—State or Federal; that its seizure and confiscation by the State officials was an unwarranted interference with interstate commerce, and the common carrier is therefore entitled to injunctive relief. It is a sufficient answer to say that state criminal laws are not lightly nullified by Federal courts of equity on the grounds that they are unconstitutional. The State Act, thought to be unconstitutional, became law in 1917; it has been before the Oklahoma courts for interpretation and construction, its constitutionality has not been challenged, and I do not think we are warranted in lightly setting it aside in order to justify injunctive relief in these circumstances. Moreover, no one is on trial for the violation of any of these acts. We are concerned with their validity only insofar as they express the public policy of the sovereign State of Oklahoma. Our purpose is to ascertain whether the power asserted in pursuance of these acts, so offends the paramount Federal

law as to justify the exercise of Federal equity powers to vindicate the national policy.

The 21st Amendment prohibits the importation or transportation of intoxicating liquors into the State of Oklahoma, and the State of Oklahoma is empowered to forbid such importation and transportation unfettered by the commerce clause of the Constitution. See also Webb-Kenyon Act, 49 Stat. 877 (27 U.S.C.A. 122). State Board v. Young's Market, 299 U. S. 59; Mahoney v. Triner Corp., 304 U. S. 401; Indianapolis Brewing Co. v. Liquor Control Commission, 305 U. S. 391; Ziffrin Inc. v. Reeves, 308 U. S. 132. But the 21st Amendment is not applicable where exclusive jurisdiction is in the United States, without power in the state to regulate alcoholic beverages. Collins v. Yosemite Park & Curry Co., 304 U. S. 518, 538. But unlike the Yosemite Park Case, there are no legitimate activities to protect, and no Federal legislative policy to vindicate. This is not a case of jurisdictional jealousy between the Federal and State sovereignties; the Federal Government has not asserted any power which may reside in it to insure the safe conduct of the shipment, nor has the consignee invoked the jurisdiction of the court. Only the interstate carrier seeks relief, and the equities of its case rest upon the legitimacy of the articles which it transported and seeks to protect.

The proper and orderly function of our dual system of government is achieved only through a delicate and meticulous balance of Federal and state sovereignty. Each is supreme within the domain delegated or reserved to it by the Federal Constitution, yet both operate to regulate the conduct and behavior of one united people. This delicate balance of power is attained, and maintained, only by a solicitous regard for the power of each sovereign in relation to the general welfare of the governed. The boundaries between the two are indistinct, and only broadly delineated by the Constitution. It is the province of the courts to maintain that essential balance by assuring to each sovereignty the full measure of respect for its laws and ordinances. This balance is not maintained by the utilization of Federal injunctive process, to insure safe conduct of a shipment of intoxicating liquor from without the State to a Military Reservation located within the State, whereat it would be a violation of Federal law to receive, sell, or

possess the same. Injunctions by Federal courts against the operation of state laws should, in all events, be based upon considerations of necessity for national dominance. In my judgment, the necessity does not exist here, and the injunction should have been denied.

Judgment.

Fifty-eighth Day, March Term, Monday, July 26th, A. D. 1943. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed; and that Yellow Cab Transit Company, a corporation, appellee, have and recover of and from Walter B. Johnson et al., appellants, its costs herein.

Order Staying Mandate.

Seventy-second Day, March Term, Saturday, August 28th, A. D. 1943. Before Honorable Orie L. Phillips and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the motion of appellants for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under section 3 of rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as a full, true, and complete copy of the transcript of the record from the District Court of the United States for the Western District of Oklahoma, and full, true, and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 2697, wherein Walter B. Johnson et al. were appellants, and Yellow Cab Transit Company, a corporation, was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 8th day of September, A. D. 1943.

(Seal, U. S. Circuit Court of Appeals, Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, and the case is assigned for argument immediately following No. 198 which is set to follow No. 134.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.